

BOND INVESTMENT COMPANIES: Bond investment company must post one hundred thousand dollar bonds-- Companies held to be Bond Investment Companies.

July 28, 1936.



Honorable Dwight H. Brown
Secretary of State
Jefferson City, Missouri

Attention: Mr. Maloney,
Commissioner of Securities.

Dear Sir:

This is to acknowledge your letter inquiring if the Fortified Investment Company and The Franklin Society are within the provisions of Section 5060, R. S. Mo. 1929, or Section 4986, R. S. Mo. 1929, and if not are such within the scope of the Securities Act, Chapter 40, R. S. Mo. 1929?

The Franklin Society and the Fortified Investment Company purpose to issue certificates (which are similar) that provide that after the expiration of fifteen annual payments the person to whom the certificate is issued will receive a fixed sum of money. The certificate has attached to it, and a part thereof, certain privileges, terms and conditions.

The Fortified Investment Company has the following privileges and conditions, among others, attached to its certificate:

"Security. In compliance with the statutes and regulations governing Investment Companies, the Company must maintain at all times an assigned deposit of securities consisting of first mortgages, or first deeds of trust on improved real estate, cash, government and municipal bonds, and/or other securities that qualify for investments of life insurance companies under the laws of

the State of New York, in an amount equal to \$110.00 for each \$100.00 of its liability hereunder, less the amount of any loans made hereon."

The Franklin Society has the following:

"Security. The Society agrees to maintain cash and securities as required by the laws of the State of Missouri aggregating in amount not less than 110 % of the Society's outstanding liabilities hereunder and under all contracts of same form said liability being the cash values shown in paragraph 7 (A) hereof less the amount of any loans made hereon."

Both the Fortified Investment Company and The Franklin Society provide in the privileges and conditions for "installment payments," advance payments," "cash value," cash loan," "payments after maturity," etc. In fact, both the Fortified Investment Company and The Franklin Society propose to issue certificates identical in nature and intent, the wording of the certificates being slightly different.

The sole question for our determination is whether or not said corporations when the proposed certificates are issued bring them within the provisions of Article 9, Chapter 32, R. S. Mo. 1929, relating to "Co-operative Companies," or within the provisions of Article 13, Chapter 32, relating to "Bond Investment Company," or within the provisions of Chapter 40, R. S. Mo. 1929, relating to Securities Department or "The Missouri Securities Act."

I.

CO-OPERATIVE COMPANIES.

Section 4986, R. S. Mo. 1929, provides in part as follows:

"Any person -- corporation which is now engaged in or shall hereafter engage in issuing contracts or agreements, whether in the nature of a bond, debenture, certificate or otherwise, providing

for the redemption, or the fulfilling of such contracts or agreements by the accumulation of a fund or funds from the contributions made by the subscribers to, or the holders of such contracts or agreements; or providing for the maturing or fulfilling of such contracts or agreements in the order of their issue or in some other fixed or arbitrarily determined order or manner; or providing for the payment of moneys or the granting or giving of any consideration, of any money or property, personal, real or mixed, greater in value, or represented to be greater in value, than the amount paid in upon such contracts or agreements, together with the actual net earnings accrued and accumulated thereon; * * * * except such * * corporations as are organized or doing business under the statutes now in existence or which hereafter may be enacted as excepted in section 4995 of this article, shall, and the same are required, for the protection of the subscribers to, or the holders of its contracts or agreements, to deposit with the state treasurer in cash, United States bonds, or bonds of any county, or municipal township, or such parts of each of the above mentioned securities so that the whole deposit shall be equal in cash value to the sum of twenty-five thousand dollars, and whenever the liability of such contracts or agreements, as hereinafter determined, shall exceed the amount of such deposit, there shall be made an additional deposit on the first days of January and July of each year, in a sum sufficient to cover the excess liabilities accrued during the last preceding six months; * * *"

Section 4995, referred to in Section 4986, supra, reads as follows:

"Provided, that nothing in this article shall be construed to apply in any manner

to any person, co-partnership, association, organization or corporation doing business under the provisions of the statutes for the regulation of banks, savings fund, trust companies, insurance companies, building and loan, bond investment, fiduciary, relief or fraternal orders, associations or companies."

Section 4991, R. S. Mo. 1929, places the supervision of said co-operative companies in the Bureau of Building and Loan Associations.

A reading of Article 8, referring to "co-operative companies," shows that the principle on which such companies operate is that of contributing to a common fund and members thereof participating in such with the restriction being that a deposit must be made by such companies with the state treasurer in a sum not less than twenty-five thousand dollars for the protection of subscribers. While Section 4991, supra, places the supervision of said companies with the Supervisor of Building and Loan Associations, however, the supervision is in the Commissioner of Finance by virtue of Section 5285, R. S. Mo. 1929.

It is our opinion that the partial payment investment certificates which the Fortified Investment Company and The Franklin Society propose to issue do not bring such corporations within the provisions of Article 9, Chapter 32, referring to "co-operative companies."

II.

BOND INVESTMENT COMPANIES.

Article 13, Chapter 32, R. S. Mo. 1929, relates to "Bond Investment Companies" and Section 5060 of said article provides in part as follows:

"Every corporation doing business in this state as a bond investment company, or company to place and sell bonds, certificates or debentures on the partial payment or installment plan, shall and the same is hereby required to deposit with the state treasurer, in cash, United States or Missouri state bonds, or bonds of any county, municipal township or school bonds,

or mortgage bonds secured by deeds of trust on unencumbered real estate * * *, or such parts of each of the above mentioned securities, so that the whole deposit will be equal to the sum of one hundred thousand dollars, * * * * *."

Section 5064 of said article and chapter provides that the Supervisor of Building and Loan Associations shall have the power to examine into the affairs of such a company. However, by virtue of Section 5285, R. S. Mo. 1929, the power of examination now vests with the Commissioner of Finance.

You will note that Section 5060, supra, specifically provides that any company that places and sells bonds, certificates or debentures on the partial payment or installment plan, must post a deposit with the State Treasurer in the sum of one hundred thousand dollars. A bond investment company is not defined by statute. However, we adopt the definition given to it by Honorable Merrill E. Otis when Assistant Attorney-General, in an opinion to Honorable B. T. Hurwitz, Assistant Commissioner of Finance, dated November 16, 1922, wherein he said:

"The purpose of the Legislature in the enactment of the Bond Investment Act, as that purpose is declared by the Legislature, was 'the protection of the investors in such bonds,' that is, the bonds sold by such investment companies. Obviously, investors in high grade governmental or municipal bonds, such as are sold by the ordinary brokerage houses, are amply protected by the security of such bonds themselves. The companies aimed at, therefore, were those companies not dealing in the bonds of municipalities or public utilities but those companies dealing in their own bonds, which bonds carry with them no security other than the good faith and financial responsibility of the companies."

In *Petters and Company v. Veigel*, 209 N. W. 9, the Supreme Court of Minnesota, in dealing with a similar question

presented by your inquiry, made this observation concerning bond investment companies (l. c. 10):

"Bonds issued by individuals are not often offered for sale to investors. Usually bonds are issued by private corporations and carry some sort of security. Loaning money is one of the purposes for which corporations of the class to which plaintiff belongs are organized. Ordinarily the loans are made on the security of real estate mortgages, which are pledged to a trustee before the corporation offers its bonds for sale. The bonds are issued in such denominations as will give small investors an opportunity to purchase them. Such investors rarely have the ability to make, or can go to the expense of making, a thorough investigation to ascertain whether the security behind the bonds is adequate. The banking department is in a favorable position to examine and appraise the security and to protect the interests of the public. These are some of the reasons why corporations organized for the purpose of issuing this class of securities may well be put in a class by themselves and made subject to the supervision of the banking department."

On March 21, 1927, Honorable H. O. Harrawood, Assistant Attorney-General, in an opinion to Honorable F. T. Stockard, Commissioner of Securities, held that the issuing of a certificate similar to that to be issued by the Fortified Investment Company and The Franklin Society constituted said corporation a bond investment company, which required the deposit of one hundred thousand dollars with the State Treasurer. Mr. Harrawood said the following:

"This article (relating to bond investment company) would seem to be more particularly intended for the regulation of corporations which offer for sale bonds, certificates or debentures, on the partial payment plan or installment plan for investment purposes."

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The Fortified Investment Company and The Franklin Society propose to issue certificates on the partial payment plan or installment plan in which the investor pays a certain amount annually for a period of fifteen years, which at the expiration of said time the investor receives a fixed sum. While provision is made for security, by virtue of the privilege and conditions and terms attached to the certificate, yet said security is not deposited with the State Treasurer.

From the above it is our opinion that the Fortified Investment Company and The Franklin Society, when such issue the proposed partial payment certificates, come within the provisions of Article 13, Chapter 32, R. S. Mo. 1929, and such must post the deposit required by Section 5060, supra.

III.

THE MISSOURI SECURITIES ACT.

Having held that the Fortified Investment Company and The Franklin Society were amenable to the provisions of the statutes relating to bond investment companies, we deem it unnecessary to discuss the Missouri Securities Act as we believe the above answers your inquiry.

As requested, we are returning herewith all the papers and exhibits appended to your letter.

Yours very truly,

James L. HornBostel
Assistant Attorney-General

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney-General.

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Encs.